IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/11/2004

CORAM

THE HON'BLE MR.JUSTICE N.V.BALASUBRAMANIAN

AND
THE HON'BLE MRS. JUSTICE R.BANUMATHI

W.P.No.35666 of 2002
and
W.P.M.P.No.53298 of 2002

M. Joseph Rathnasamy,
S/o.A.Michael,
Poonagaram,
8th Cross,
Madurai. .....Petitioner

-Vs-

1. The Government of Tamil Nadu,
rep. by its Secretary to
Government,
Department of Industries,
Fort. St. George,
Chennai 600 009.

2. Member Secretary,
Tamil Nadu Pollution Control Board,
Chennai.

3. The District Environment Engineer,
Tamil Nadu Pollution Control Board,
668, SIDCO Industrial Estate,
Kappalur,
Madurai 625 006.

4. The Joint Director of Agriculture,
Madurai.

5. St.Pious Boys Tour Trust,
Madurai rep. by its Managing
Trustee Bro.Analar,
Pulluttur (Post),
Ellisnagar (Via)
Madurai 625 010.

6. Meron Biopolymers
rep. by its Managing Partner,
Deepa Building,
Santo Gopalan Road,
Chullukkal,
Cochin 682 005. .....Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for Issuance of Writ of Certiorarified Mandamus, as stated therein.

For Petitioner :- Mrs. Radhika Krishnan for
M/s. Ramasubramaniam Associates

For Respondents:- Mr. P.S.Sivashanmuga Sundaram
Additional Government Pleader for
R-1 to R-4

Mrs. Rita Chandrasekaran for R-2,3

Mr. S. Jayaraman for R-5

No appearance for R-6

:ORDER

(Order of the Court was made by R.BANUMATHI, J.)
This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records of the Second Respondent in Consent Order No.007 dated 30.01.2002 and to quash the same and forebear the Respondents 1 to 4 from according any approval to the Sixth Respondent for running a manufacturing unit in R.S.Nos.10,11 and 13 in Melamathur Village, Madurai.

2. The Petitioner is the Executive Director of a Three Star Hotel Germanus Days Inn, which is situated in the outskirts of Madurai City surrounded by Nagamalai Hills, about 6 K.Ms away from Madurai. The Petitioner has constructed Hotel in that area only on account of the scenic surrounding. The Fifth Respondent owns about Three acres of land comprised in Survey Nos.10,11 and 13 in Melamattur Village, which is one of the villages in Revenue village Pulluttu. Pulluttu also attracts lot of local tourists because of the natural spring Nagar Theertham. The Sixth Respondent / Meron Biopolymers being a Company having its office at Cochin is manufacturing the products from Sea Weeds. The Fifth Respondent has entered into an agreement with the Sixth Respondent for a small portion. Later, the Petitioner has found that the Sixth Respondent has put up a big manufacturing unit, which is to be processed from out of the Sea Weeds to be used for the manufacture of Pharmaceuticals. The Unit requires about 50,000 litres of Water. Consumption

of such huge quantity of Water would cause diminution of the Ground Water table.

3. The Petitioner contends that the Industry now sought to be set up by the Sixth Respondent is a Chemical Unit which generates polluted effluents, falling within G.O.Ms.No.213 Environment and Forests (EC-1) dated 30.03.1989, which prohibits establishments of Industries as listed in Annexure I within 1 K.M from the embankments of the water sources mentioned in Annexure 2 of the Notification. The Fifth Respondent has not permitted the Sixth Respondent to construct such a huge factory as they had only executed a lease in respect of a small shed and residential unit in S.No.11 of Melamattur Village. The Second Respondent has issued the Consent Order dated 30.01.2002, on the basis of which, the Sixth Respondent appears to be proceeding with the construction. The Consent Order issued by the Second Respondent has been granted only under Sec.21 of the AIR (Prevention and Control of Pollution) Act 1981 (hereinafter referred to as AIR (P & CP)Act) and not under the Water (Prevention and Control of Pollution) Act 1974 (hereinafter referred to as Water (P&CP)Act). On the facts and circumstances, the Second Respondent cannot give the Consent Order to the Sixth Respondent for putting up such Industry as it is within 2 K.Ms from the River Vaigai, thereby attracting the Prohibition under G.O.Ms. 213 Environment and Forests (EC-1) dated 30.03.1989 and G.O.Ms.No.127 Environment and Forests (EC-3) dated 08.05.1998. The Petitioner prays for issuance of a Writ contending that the Industrial Unit put up by the Sixth Respondent and the effluents would be great intensity affecting the Ground Water and the Air in and around the area would also be polluted.

4. The Fourth Respondent / Joint Director of Agriculture has filed the Counter denying the averments in the Petition. He has stated that so far no letter has been received from the Petitioner by the Respondent. He has further stated that no Consent Order has been passed or given by the Second Respondent and hence, the question of cancellation of Consent Order by the Second Respondent does not arise.

5. We have heard the submissions of the learned counsel for the Petitioner. Contending that the issuance of Consent Order by the Second Respondent / Tamil Nadu Pollution Control Board is not in accordance with the provisions of G.O.Ms.No.213 Environment and Forests (EC-1) dated 30.03.1989, learned counsel urged that the putting up of the factory with its manufacturing unit at Melamattur village in S.Nos.10 ,11 and 13 is to be restrained. The main contention urged is that the factory set up by the Sixth Respondent would fall within the Industries listed in Annexure I of G.O.Ms.No.213 Environment and Forests (EC-1) dated 30.03.1989, which prohibits establishment of Industries within 1 K.M from embankments of the water sources. Subsequently, by G.O. Ms.No.127 Environment and Forests (EC-3) dated 08.05.1998, the distance of 1 K.M stipulated in G.O.Ms.No.123 Environment and Forests (EC-1) dated 30.03.1989 has been extended to a distance of 5 K.M. Drawing our attention to the above Government Orders, learned counsel for the Petitioner urged that the factory sought to be set up

by the Sixth Respondent is to be prohibited. The next contention urged by the Petitioner is that from the reply of the Fifth Respondent, the Petitioner has learnt that the Sixth Respondent has put up the manufacturing unit in S.Nos.10.11 and 13 in violation of the Lease Agreement.

6. We have carefully considered the averments in the petition, submissions of the learned counsel appearing for the Petitioner and the Respondents and the materials on record.

7. From the records, it is seen that the Second Respondent has issued Order (Consent Order No.007 Dated 30.01.2002) in favour of the Sixth Respondent for construction of the Unit in S.Nos.10,11 and 13 of Melamathur Village. The permission granted is valid for two years. The said Consent Order was issued under AIR (P & CP) Act.

8. As per Water (P & CP) Act, prior concurrence of the Agriculture Department is to be obtained. From the Counter Statement filed by the Fourth Respondent, it is seen that the following guidelines are given:-
i.In G.O.Ms.No.559, Agriculture (AP.I) Department dated 09.10.1991, the Government directed the Planning Authorities of the State to get the prior concurrence of the Agriculture Department that the wet lands concerned are not fit for cultivation before according approval to House Sites building plans, whenever the private wet lands are involved.
ii.In G.O.Ms.No.605 Agriculture (API) Department dated 11.11.1991, the Government has issued the following guide lines for regulating the issue of concurrence by the Joint Directors.
Further guidelines are given that while granting such consent order, the Joint Directors of Agriculture Department should ensure that the wet lands involved are not fit for cultivation. While granting concurrence of the Department to the Planning Authorities for converting the same for non agricultural purposes, the Joint Directors are empowered to grant the concurrence in respect of Building Applications only. The Joint Directors of Agriculture Department are empowered to grant concurrence in respect of individual building applications only. In the case of layouts for building sites, application for cluster of building, private group houses, apartments, Factories and building coming under non-residential purposes like shopping complex, play grounds, parks, cinema houses, Kalyan Mandaps etc, only the Government in Agriculture Department is the competent authority to grant concurrence for conversion of wet lands. The same has been amended in Government Letter No.4913/AP.I/92-2 dated 01.04.1992 of the Agriculture Department, Madras 9, which is as follows:
In cases where the Master Plan / Detailed Development plan has been prepared and consented under the Town and Country Planning Act and if the proposals of the applicant conforms to the approved land use in the said plans, the No Objection Certificates from the Agriculture Department is not necessary. The onus of deciding the need to refer such cases or not to refer such cases will rest with the Planning Authorities.

9. The above Amendment relates only to the Master Plan / Detailed Development Plan. Thus, in cases of Factories presently, only the Agriculture Department / the Fourth Respondent is competent to issue the consent letter

regarding conversion of Agricultural land into Non Agricultural land and construction of factory (Vide Counter filed by the Fourth Respondent) Act. The Sixth Respondent has not at all made any requisition to the Agriculture Department for issuing concurrence Letter. In the Counter Statement, the Fourth Respondent has denied receipt of any petition from the Petitioner. Further, the Fourth Respondent has asserted □no consent order has been passed or given by the second respondent to the Sixth Respondent and hence, the question of cancellation of Consent Order does not arise. Further, no proposal requesting to issue concurrence for the construction of factory by the Sixth Respondent has been sent to the Government by the fourth respondent.

10. The main point urged onbehalf of the Petitioner is that the proposed Factory by the Sixth Respondent would require the minimum qunatity of 50,000 litres of Water and if the Sixth Respondent is permitted to draw such huge quantity of Water, it would result in the level of reduction of Ground Water Table, ultimately affecting the entire Agricultural activities in and around the area. Further contention of the Petitioner is that the Industry now sought to be set up is a Chemical Unit which generates polluted effluents. Learned counsel for the Petitioner drawn the attention of the Court to G.O.Ms.No.213 Environment and Forests (EC-1) dated 30.03.1989, which prohibits establishments of Industries as listed in Annexure I within 1 K.M from the embankments of the water sources mentioned in Annexure 2 of the Notification. Now, by G.O.Ms.No.127 Environment and Forests (EC-3) dated 08.05.1998, the distance of 1 K.M stipulated in G.O.Ms.No.123 Environment and Forests (EC-1) dated 30.03.1989 has been extended to a distance of 5 K.M. Whether the Factory that is sought to be set up by the Sixth Respondent is falling within the prohibited distance or not is the matter of Investigation that is to be undertaken by the Appropriate Authority.
11. From the Counter Statement filed by the Sixth Respondent, it is clear that the Sixth Respondent has not obtained the Consent Letter from the Agricultural Department, who is competent to issue the Consent Letter for starting the Factory. The Tamil Nadu Pollution Control Board has issued the Consent Order No.007 Dated 30.01.2002 in favour of the Sixth Respondent only AIR (P & CP) Act. It was informed by the Second Respondent / Pollution Control Board that Consent Letter has been issued under the Water (P&CP) Act also. Despite several adjournments, no Letter or definite materials have been produced before this Court that the Consent Letter was also issued under the Water (P&CP) Act.

12. When the matter was heard on several occasions, the Second Respondent / Tamil Nadu Pollution Control Board has only filed the Report informing the Court that the Sixth Respondent □ Meron Biopolymers was inspected on 04.11.2004 and that the Unit was found to be not in operation. It is further stated that the Chief Executive of the Unit vide letter dated 24.01.2004 has informed that the proposal for establishing the Unit has been dropped. The representative of the Fifth Respondent, who is the owner of the land leased to the Sixth Respondent has also informed the Second Respondent during the Inspection that the Unit was not in operation.
13. Learned counsel for the Petitioner has also informed the Court that after the filing of the Writ Petition, the Unit is not in operation. The Statement of the Second Respondent that the Unit is not in operation is

recorded. In view of the above, the Second and Fourth Respondents are directed not to permit the Sixth Respondent to run the Factory in future.

14. This Writ Petition is ordered accordingly. No costs.
The connected W.P.M.P.No.53298 of 2002 is closed.

Index: Yes
Internet: Yes

Dpn/-